RECENT CASE NOTES

ADMINISTRATIVE LAW—JUDICIAL REVIEW OF ORDER OF POSTMASTER GENERAL.—Acting under the Espionage Act of June 15, 1917, the Postmaster General ordered the plaintiff's publication excluded from the mails. From an interlocutory order granting a temporary injunction commanding the defendant, postmaster at New York, to transmit the plaintiff's publication, an appeal was taken. *Held,* that the order granting the preliminary injunction was erroneous. *Masses Publishing Co. v. Patten* (1917, C. C. A. 2nd) 246 Fed. 24.

The complainant filed its bill in equity to enjoin the postmaster from acting under the Espionage Act of June 15, 1917, to withdraw its mailing privilege. *Held,* that the complainant was not entitled to a preliminary injunction. *Jeffersonian Publishing Co. v. West* (1917, D. C. Ga.) 245 Fed. 585.

See COMMENTS, p. 550.

AGENCY—VOID POWER OF ATTORNEY—LEASE EXECUTED THEREUNDER NOT SUBJECT TO REFORMATION.—A statute provided that powers of attorney to make leases for a term of more than three years must be properly acknowledged and recorded. The plaintiff in error appointed an agent to have general supervision of the premises in question, but such authority was not acknowledged. Subsequently, the agent executed a lease to the defendant in error for a period of five years, the lease reading that the lessee would surrender possession on one year's notice. On refusal to quit after proper notice, action to oust was commenced, whereupon the defendant in error instituted proceedings to have the lease reformed, claiming that a clause had been omitted which would have made the lease terminable only after the happening of a specified event. *Held,* that since the agent's power of attorney was not acknowledged, the lease was void and could not be reformed. *Lithograph Bldg. Co. v. Watt* (1917, Oh.) 117 N. E. 25.

A power of attorney ordinarily need not be acknowledged. *Moore v. Pendleton* (1861) 16 Ind. 481; *Tyrrell v. O'Connor* (1897, Ct. Err.) 56 N. J. Eq. 448, 41 Atl. 674. But, if required by statute, acknowledgment is a condition precedent to the validity of the agent's acts. *Oatman v. Fowler* (1871) 43 Vt. 462. See also 1 Mechem, *Agency,* 166; 1 *R. C. L.* 258. In such cases the factual element of authority is present, for the principal has given the agent what he believed to be sufficient authority; but, because of the effect of the statute, the expected legal relations are not created, and the intended agent does not acquire the "legal power" to convey. Where there is no "power" because of non-compliance with the statute, equity will not take cognizance of the agent's acts with a view to reformation; for there must first be a valid agreement. *Gebb v. Rose* (1874) 40 Md. 387; *Hedges v. Dixon County* (1893) 150 U. S. 182, 192, 14 Sup. Ct. 71. See also 34 *Cyc.* 915. Consequently, since the invalidity could not be remedied, the addition of the omitted words would be vain. An instrument inoperative as such because of the agent's lack of power may be given the effect of a contract to make such an instrument, if such contract would have been within the agent's powers. *Heinlen v. Martin* (1879) 53 Cal. 321; *Lobdell v. Mason* (1894) 71 Miss. 937, 15 So. 44; see also 1 Mechem, *Agency,* 162. In the principal case, power to make any such contract was lacking.

ALIEN ENEMIES—RIGHT TO SUE—FRENCH CORPORATION WITH GERMAN STOCKHOLDERS SUING IN FRANCE.—A mining company incorporated and managed in